

## **REMARKS**

### **Certified Priority Document**

Pursuant to the provisions of 35 U.S.C. § 119 and 37 C.F.R. § 1.55, Applicant is submitting a claim to priority along with the certified copy of Taiwan Patent Application No. 092210931, filed on June 16, 2003. Acknowledgment of the receipt of this document is requested.

### **Claim Rejections**

Claims 1, 3, 4, 6 and 7 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Moorman (U.S. 6,047,441). Claim 2 is rejected under § 103(a) as being unpatentable over Moorman in view of Cook (U.S. 1,125,067). Claims 5, 8 and 9 are rejected under § 103(a) as being unpatentable over Moorman in view of Rampolla et al. (U.S. 5,062,186).

### **Drawings**

It is noted that the Examiner has accepted the drawings as originally filed with this application.

### **New Claims**

By this Amendment, Applicant has canceled claims 1-9 and has added new claims 10-19 to this application. It is believed that the new claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The new claims are directed toward an elongated shut apparatus comprising: a primary plate (1) having a crescent shaped cross section with interior and exterior surfaces; and a follower plate (2) having a crescent shaped cross section with interior and exterior surfaces, wherein the interior surface of the primary plate faces the interior surface of the follower plate.

Other embodiments of the present invention include: a handle plate (3) connected to a lateral edge of one of the primary plate and the follower plate; a plate

(13, 14, 23, 24) connected to a center of the exterior surface of one of the primary plate and the follower plate; the primary plate has a first engaging element (11) extending along a center of the interior surface thereof and the follower plate has a second engaging element (21) extending along a center of the interior surface thereof, the first engaging element engaging the second engaging element; the first engaging element is a tenon and the second engaging element is a groove; the first engaging element is a groove and the second engaging element is a tenon; the primary plate has a first wing (12) extending along a center of the interior surface thereof and the follower plate has a second wing (22) extending along a center of the interior surface thereof, the first wing contacting the second wing; the first wing has a first engaging element (121) and the second wing has a second engaging element (221), the first and the second engaging elements are selected from a tenon and a groove; the primary plate has a first recess chamber (15) with a first fastener (151) extending along a center of the interior surface thereof and the follower plate has a second recess chamber (25) with a second fastener (251) extending along a center of the interior surface thereof, the first fastener and the second fastener meshing together; and a slider (4) movable along the primary plate and the follower plate, and having a central push arm (41).

The primary reference to Moorman discloses a flexible sheet reinforcement apparatus including a first conical shaped member (12) with a first connector (30) and a second conical shaped member (14) with a second connector (50).

Moorman does not teach a primary plate having a crescent shaped cross section with interior and exterior surfaces; a follower plate having a crescent shaped cross section with interior and exterior surfaces; a handle plate connected to a lateral edge of one of the primary plate and the follower plate; nor does Moorman teach a plate connected to a center of the exterior surface of one of the primary plate and the follower plate.

The secondary reference to Cook discloses a coupling including a circular locking member (17) with an eccentric opening (18) and an extension (19).

Cook does not teach a primary plate having a crescent shaped cross section with interior and exterior surfaces; a follower plate having a crescent shaped cross section with interior and exterior surfaces; a handle plate connected to a lateral edge

of one of the primary plate and the follower plate; nor does Cook teach a plate connected to a center of the exterior surface of one of the primary plate and the follower plate.

The secondary reference to Rampolla et al. discloses a quick-sealing design for radiological containment including containment fabric (32) connected by an adhesive layer (42), hook (34) and pile (36) connector, or a combination thereof.

Rampolla et al. do not teach a primary plate having a crescent shaped cross section with interior and exterior surfaces; a follower plate having a crescent shaped cross section with interior and exterior surfaces; a handle plate connected to a lateral edge of one of the primary plate and the follower plate; nor do Rampolla et al. teach a plate connected to a center of the exterior surface of one of the primary plate and the follower plate.

Even if the teachings of Moorman, Cook, and Rampolla et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: a primary plate having a crescent shaped cross section with interior and exterior surfaces; a follower plate having a crescent shaped cross section with interior and exterior surfaces; a handle plate connected to a lateral edge of one of the primary plate and the follower plate; nor does the combination suggest a plate connected to a center of the exterior surface of one of the primary plate and the follower plate.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that

it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Moorman, Cook, or Rampolla et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Application No. 10/617,374

Neither Moorman, Cook, nor Rampolla et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's new claims.

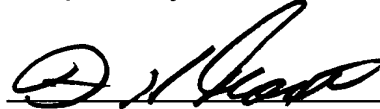
**Summary**

In view of the foregoing amendments and remarks, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

Date: September 30, 2004

By:



Bruce H. Troxell  
Reg. No. 26,592

TROXELL LAW OFFICE PLLC  
5205 Leesburg Pike, Suite 1404  
Falls Church, Virginia 22041  
Telephone: 703 575-2711  
Telefax: 703 575-2707